

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

PROSPECTING IN NAVIGABLE)	Administrative Cause
AND NONNAVIGABLE)	Number: 08-105W
WATERWAYS)	(LSA Document #09-80(F))

**RULE PROCESSING, REPORT OF PUBLIC HEARING AND COMMENTS,
AND RECOMMENDATION FOR FINAL ADOPTION**

1. RULE PROCESSING

For consideration are amendments proposed to 312 IAC 6 for navigable waterways and to 312 IAC 10 for nonnavigable waterways within floodways to govern prospecting for hard mineral resources. To assist with understanding the subject of the proposed rule amendments, a history of the development of the proposed amendments follows.

During its October 2007 meeting, the Advisory Council opened discussion of the regulation of stone and gravel extractions from rivers and streams. Richard Cockrum suggested the activity could have an adverse impact on fisheries and other wildlife, as well as on botanical resources. The DNR was requested to prepare a draft to address these activities, as well as hard mineral extraction activities (sometimes referred to as “prospecting”).

Ron McAhrn and Jon Eggen led an agency effort to prepare a working rule draft. The draft was presented to the Advisory Council during the February 2008 meeting. The original draft included only nonnavigable waterways, but as a result of discussions in February, comparable provisions were prepared for navigable waterways. The structure of the proposal was that a general license would be available for the kinds of gravel extraction and prospecting activities which were believed to have minimal environmental impacts, but with Lake Michigan being disqualified from a general license. A revised draft was prepared and resubmitted to the Advisory Council for the April meeting.

During the April 2008 meeting, the Advisory Council responded favorably to most aspects of the revised rule draft. One notable exception was that concerns were expressed for allowing the use of motorized equipment to mine in navigable waters. Additional changes were incorporated, and a proposal to address gravel extractions and prospecting, on both navigable and nonnavigable waterways, was forwarded to the Natural Resources Commission.

The Commission considered the rule proposal during its May 21, 2008 meeting at McCormick's Creek State Park in Spencer. Interested citizens, including several prospectors, appeared and expressed concerns for the potential regulatory consequences. The Commission gave preliminary adoption to the provisions pertaining to gravel extractions and similar activities (commonly referred to as the "Creek Rock Rules"), but it remanded to the DNR and to the Advisory Council the portions of the rule pertaining to prospecting. The Creek Rock Rules successfully completed the rule-adoption process as LSA Document #08-614(F) and are not subsequently considered in the current report.

Following remand, a delegation of prospectors and representatives of the DNR and the Advisory Council viewed prospecting activities and their consequences at a site on Spring Creek in White County. As a result of the viewing, a better understanding of prospecting was obtained, and several modifications were made to the original regulatory proposal.

On August 13, the Advisory Council considered a new rule proposal directed exclusively to prospecting. Following an extended discussion, the Advisory Council recommended adoption of the new proposal with several amendments. Included were clarifications of riparian rights, that the general license authorized the use of motorized equipment but the equipment must be hand-held, and a restriction to daylight hours of activities approved under the general license.

On November 18, 2008, the Commission again reviewed the proposal to govern prospecting and this time approved language for preliminary adoption. The pertinent portions of the minutes for the November meeting stated:

Linnea Petercheff of the Division of Fish and Wildlife introduced this item. For consideration are new rules to govern “prospecting” on navigable and non-navigable waters. She said “prospecting” would be defined as any activities conducted in preparation for or to remove hard mineral resources, such as gold platinum and silver, from a stream. With the new rules, prospecting could be done within the ordinary high watermark in specified Indiana waters through compliance with the specifications for a “general license”. No mercury or other chemicals could be used to assist in the recovery of the minerals. Activities must occur between sunrise and sunset. No mussels or endangered species could be taken. She said a permit would be required from the Division of Water to use equipment other than as listed in the rule language.

Patrick Early commented, “We’ve had a lot of opportunities. Several of us made a site visit, and we feel that the rules as they are, this is a good thing to go forward with.”

Mike Phelps addressed the Commission for comments. He said that “many of the prospectors were skeptical how this would turn out, but throughout the summer we had many meetings, many discussions. We even had an opportunity to see about ten members, some of who are here, in shorts and tennis shoes and waders, splashing around in the creek actually watching ‘prospecting’ going on, taking pictures and taking water samples and being very diligent about how they address this.”

Phelps thanked Patrick Early, Ron McAhron, and Steve Lucas and other members of the DNR, the Advisory Council and the Commission for their involvement with the proposed rule. “I think they have done fair due diligent work on this. The proposal has addressed both sides of the issues concerning conservation and recreation. I believe all members that were involved are to be commended for their efforts.”

Jack Corpuz addressed the Commission. He expressed concerns for the conduct of recreational prospecting. “We license hunters and we license fisherman, who are using natural resources in Indiana, but we have not licensed these recreational prospectors. It’s not a deal breaker, but it’s something I wish the Commission would think about perhaps in the future. All recreational activities in Indiana, whether it’s hiking, bird-watching, prospecting, impact our natural resources. I think it’s time for the other groups to start paying their own way and to take ownership of what’s going on in natural resources that we all really enjoy.”

Carl Kelle, former President of the Southern Indiana Chapter of the Gold Prospector’s Association, addressed the Commission. “I do represent somewhere around 100 prospectors that are active in this organization. There’s another chapter here called the Central Chapter, and they have other members, also. But, at any given time, I’ve been asked how many people would be ripping up the creek beds and dredging, and, truthfully, if there was ten at one given time in the whole state, it would be probably a very conservative estimate. I’m very fortunate to represent these 100 individuals, and just want to bring forth thoughts from a meeting we just had last month. They said to be sure and express their gratitude and thanks for all the work for the rule. We read the current proposals

at our meetings, and they were 100% in favor of it. Also, we reiterate that we stand firm that if you ever have a need for us to get the word out, as far as where there are different endangered species, different areas that really need a closer look, be sure and keep us in mind.”

Kelle said his Association holds monthly meetings which include training pertaining to protecting resources. “We do bring revenues in. We want to share those revenues with the State of Indiana in the many resources you make available for us. So, thank you, very much, for all the time and the effort you put into it.”

The Chair replied, “Thank you all for your kind words. I do remind the Commission and those who spoke that this stage is preliminary adoption. There will be a formal course that takes place going forward with a formal hearing. We’ll be back again for final adoption. But, thank you everybody, including the Advisory Council.”

Thomas Easterly moved to give preliminary adoption to the proposed new rules for prospecting in waterways. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

A “notice of intent” to adopt the proposed rule amendments was published in the INDIANA REGISTER on February 11, 2009 as LSA Document #09-80. The notice listed Linnea Petercheff of the DNR’s Division of Fish and Wildlife as the "small business regulatory coordinator" for the proposal.

As specified by Executive Order, a proposed fiscal analysis of the rule proposal was submitted to the Office of Management and Budget on February 12. In a letter dated May 22 and received July 7, 2009, the Office of Management and Budget approved the proposed fiscal analysis.

On July 8, 2009, the Division of Hearings submitted a copy of the proposed rule and corresponding “Economic Impact Statement” to the Legislative Services Agency. On the same day, LSA provided an intended date of posting of July 22, 2009. Later that day, the Division of Hearings provided LSA with a “Notice of Public Hearing”. Still later on July 8, the LSA issued to the Commission an “authorization to proceed” with the rule proposal.

A public hearing on the rule proposal was scheduled for August 24, 2009 at 9:00 a.m., EDT, in the Indiana Government Center North, 100 North Senate Avenue, Room N501,

Indianapolis, Indiana. Notice of the public hearing and the text of the proposed amendments were published in the INDIANA REGISTER on July 22, 2009. This notice included the statement under IC 4-22-2.1-5 concerning rules affecting small businesses. The notice also included information required under IC 4-22-2-24. Notice of the public hearing with similar information was published on July 27, 2009 in the Indianapolis DAILY STAR, a newspaper of general circulation in Marion County, Indiana. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the calendar for the Commission's website.

2. REPORT OF PUBLIC HEARING AND EMAIL COMMENTS

A. Report of Public Hearing

The public hearing was held in Indianapolis as scheduled on August 24, 2006. Represented from the Department of Natural Resources were Ron McAhron, Deputy Director for the Bureau of Water and Resource Regulation; Major Steve Hunter from the Division of Law Enforcement; and, Linnea Petercheff from the Division of Fish and Wildlife.

The following comments were received from citizens:

Michael Phelps, a prospector from Brookston, who had previously provided email comments and had assisted in development of the proposed standards, stated:

"I'm just here to voice my support. I think the rule is well crafted" to "take into account" the interests of the state, the needs of the environment, and the recreational enjoyment of prospectors.

Carl Kelle, a prospector and officer in the Indiana Chapter of Gold Prospectors, also participated in development of the rule proposal. He said he did not purport to speak for each member but had shared the draft rule with the Indiana Chapter during a meeting the previous Saturday. No one at the meeting expressed opposition to the concepts, and some expressed support for the draft.

Kelle said he was interested in developing greater specificity as to “where and what endangered species are out there”. He asked whether a pamphlet or another guidance could be developed that would augment understanding of the practical applications of the rule. He said otherwise knowing what and where to avoid endangered species could be challenging.

Linnea Petercheff responded that the Division of Fish and Wildlife would help develop a guidance document. The guidance could be placed online as a nonrule policy document, assuming the rule is approved and given final adoption. She said agency financial resources were limited, and the Division of Fish and Wildlife needed to be sensitive to avoiding the creation of a document that could be used by unscrupulous collectors of endangered species. The emphasis would be upon location but potentially with online cross-references to descriptions of species of concern. Petercheff stated she would have at least a preliminary outline, to be shared during the September 22 Commission meeting, of what the Division of Fish and Wildlife could undertake in response to Kell’s request.

B. Email Comments

The following comments were received by email:

Jack Corpuz, Pheasants Forever, Indianapolis, Indiana (January 18, 2009)

Support this proposal with one exception: I would still like to see some minimal licensing for amateur prospectors.

Robert D. Henze, Ripley County (January 27, 2009)

Allow recreational gold prospecting in streams and rivers with a sluice box, rocker box, shovel and gold pans.

State that any hazardous materials like lead sinkers, lead bullets, or mercury that are recovered from the environment of the said stream or river must be retained by the prospector for proper disposal at a designated state provided location.

This would provide good wholesome family recreation in our state and also help clean up our environment.

Michael G. Phelps, Brookston, Indiana (February 18, 2009)

I support the rules as posted.

Raymond M. Stanis, Sr., Watseka, Illinois (February 19, 2009)

I prospect and Indiana is the closest place to me. Except for last year spent many hundreds of dollars in local towns there and had a wonderful time. These new rules would allow me to enjoy my hobby and share it with my grand kids. Please approve these rules.

Keith C. Chasteen, Louisville, Kentucky (February 19, 2009)

I commend you on the proposed rules for recreational prospecting in the State of Indiana. The proposed rules will protect the natural resources of the state, as well as continue to provide for the recreational activity of prospecting. This activity has positive impacts on Indiana's recreation revenues and should continue to be available as you have outlined in your proposal.

Charles R. Lassiter (MidwestProspector.com), Logansport, Indiana (February 19, 2009)

I am very glad that recreational prospecting has finally been given the same consideration as other outdoor activities. I think that the new rules are fair and reasonable and will allow this family oriented hobby to continue in an environmentally friendly manor. I would like to thank all of the members of the NRC and DNR whom have worked so diligently to allow our hobby to continue unabated. With these new rules in place, a whole new generation of young people will be able to learn about the geology and natural wonder of our great state, and maybe find a little gold in the process. Thanks!

Billy B. Webb, Jr. (Ohio Buckeye Chapter of the G.P.A.A.), Willard, Ohio, (February 20, 2009)

Thank you very much for allowing dredging and prospecting.

Laurence Drown (Indiana Recreational Gold Prospectors), Marshall County, Kentucky (February 21, 2009)

I'm very pleased that this amendment has been tendered. In the past I have spent thousands of dollars prospecting in Indiana. Now that recreational dredging is being allowed, I am considering buying a seasonal home in Indiana. I can assure you that your decision is a good one, because small-scale dredging provides a positive benefit for both the fauna and habitat of streams and rivers.

Wayne A. Mercer (President, Central Indiana Gold Prospectors Association of America), Johnson County, Indiana (February 21, 2009)

Thank you for your work on this area. Recreational Prospecting has needed to be addressed for some time. The new rules are fair while allowing the activity to be regulated it protects the environment and endangered species. I want to thank the N.R.C. for their due diligence on this issue. Their extra effort {including their attendance of a field "recreational prospecting" demonstration} and investigation of the issue has provided a balanced set of rules everyone can live with. Thank You. May you all find a little "color" in your Pan!

Nathan Yoke (IRGPA), Shirley, Indiana (February 22, 2009)

Well I would like say thanks and about time Indiana got with it on the prospecting as most of us all know its the oldest job out their and started the USA now Indiana can get on board like NC and other states.

James Simons (New York State Prospectors), Branchport, New York (February 22, 2009)

This would be a win-win situation for the state of Indiana and for the Recreational Prospector. Also the revenue the state would gain from this. Also the streams would be cleaned of trash without the expense of the state.

Joshua Townsend, Elmira, New York (February 22, 2009)

I would just like to voice my support of the law changes.

Richard O. Cordes (Ohio State Prospectors Association member), Napoleon, Ohio, (February 23, 2009)

I think that allowing the recreational prospector to work in your waterways is a very good idea. The removal of some of the lead and other toxic metals helps cleans up the environment and protects the wildlife and fish. I have seen how much the fish in the streams benefit from the freshened spawning beds the prospector's leave behind. It will be nice to be able to come over to Indiana and spend some of my time and money in your state while I am doing some prospecting of my own in the streams.

Michael Downing, Miami County, Indiana (February 23, 2009)

Thank you for clarifying and possibly amending the rule. It will be nice to prospect responsibly and know which waters are off limit.

Raymond M. Stanis, Jr., Watseka, Illinois (February 25, 2009)

I have been gold prospecting for 7 years now, and I support this bill 100%. Me and my family can go out for the day and have a great time outdoors and get some exercise to boot. it would be a shame to loose such an activity for my family.

Tony Lovatto, Huntington, Indiana (February 27, 2009)

Gold prospecting has many positive effects on the environment and economy. It is a hobby that can be enjoyed by many and can involve the family. You will find that many of the people that enjoy weekend prospecting for gold are the same people who hunt, fish and do many other things outdoor related. I can speak for myself and everyone that I know involved in these hobbies and say that we all try to leave an area better than we found it because this is the only way it can be preserved for our future and enjoyed at the same time. Thank you for providing these means of enjoyment to the people who can take advantage of them and working with the people who support and pay taxes for this purpose.

Matthew Kelly, Grant County, Indiana (February 28, 2009)

I want to thank you all for working with hobbyist so we can enjoy prospecting and the natural beauty of Indiana.

James Boyle, Mt. Prospect, Illinois (March 1, 2009)

I believe these rules are fair and good for Indiana and recreational prospectors. I have personally removed several pounds of lead and small amounts of Mercury from Indiana's waterways and had a lot of fun doing it. I have also contributed to Indiana's economy purchasing food fuel and lodging. Thank you for giving this important matter your attention.

Tim Skees (GPAA, LDMA, Weekend Gold Miners, Southern Prospector Show), Grayson, Kentucky (March 4, 2009)

I spend a considerable amount of time and money visiting Indiana prospecting in the state's streams. I feel a small fee, or permit wouldn't hurt anything, however, the amount of gold/minerals taken by prospectors is usually a 5 gallon bucket full per week at best. I feel the environment does not suffer in any way due to prospecting, rather it improves fish habitat, by aerating the creek beds, and waters. Fish nearly always come to the dredge and try to grab foods and prey stirred up by dredging, and feed off them. If we have to buy a small permit, that is fine by me, however, if we were prohibited from prospecting, speaking for myself, Indian would loose approximately \$5,000 plus in what I spend each year, just from me alone. The revenue brought to local businesses is significant, and should be considered in any decision.

Thomas Young, Marshall County, Indiana (March 5, 2009)

I want to thank the NRC and the DNR for working with Indiana prospectors for putting together a set of rules and regulations that will allow for our hobby and recreational prospecting to continue. I hope for a passage of the rules.

James Owens, Rush County, Indiana (March 5, 2009)

Recreational gold prospecting is truly a way to have family outings in our Federal and State Parks and Forests. No one gets monetarily rich from these outings but they do become closer to their environment. They learn respect for their surroundings. The State of Indiana needs to adopt rules to enhance this activity, not hinder it.

Tom Van Vleet, Aurora, Illinois (March 7, 2009)

Thanks, the new rules look encouraging. Please define what Riparian means? Why is it necessary to get written property owner permissions? Some landowners don't seem to want to be bothered I have found, beyond a verbal ok? Also, as far as motorized gear, it only lists suction dredges? What about motorized high bankers, small trommels, metal detecting for gold in the creeks? Chuck Lassiter knows about these things if you have questions? I don't want to get ticketed on a technicality, motorized machine wise, as I prefer to use a high banker with a dredge nozzle attached or my shovel.

Darrin Batman, Moultrie, Illinois (March 19, 2009)

I have been going to Indiana for over a year panning and sluicing, and have decided to try dredging. My family loves prospecting in Indiana, and I hope we will be able to continue doing so.

Stephen J. Wlock (Northeast Pennsylvania Gold Prospectors), Sayre, Pennsylvania (March 21, 2009)

Ya know I just want to say that the prospector is not the one harming the water ways. Nature will do more damage then we would plus we clean out the lead and any other stuff we find. And, after dredging, the fish have new places to spawn and food. So what is wrong with you people who want to keep water ways clean? We do that for you at no cost to you. Again, we are not talking about full scale mining just the weekend guy.

Dennis Dale Jones, Montgomery County, Indiana, (March 30, 2009)

I appreciate the hard work and study that has gone into the proposal for Prospecting in Waterways. I am hopeful that this new law will be passed as proposed. Thank you for your efforts!

Steve Riggs, Louisville, Kentucky (July 6, 2009)

I am good for Indiana's economy because I travel to Indiana for family oriented prospecting like in Morgan Monroe and spend money and pay taxes in Indiana. I also do recreational prospecting in streams. I take great care to watch out for the environment and even take out trash and toxic materials found in the water. People use streams for recreation in various ways; canoeing, fishing, and in my case rock hounding and prospecting. As long as fair rules are set, everything will be fine. Size limits like 4 or 5" on dredges make good sense and keeps it in the hobby mode.

James O. McIntyre, Columbus, Indiana, GPAA/Central Indiana GPAA, (July 4, 2009)

I am satisfied with the proposal as it currently reads. However I am concerned that the IDNR/NRC may require a fee for permits, I would be opposed to any permitting fees associated with this current proposal.

Michael G. Phelps, Brookston, Indiana (August 8, 2009)

I fully support the proposed rules as written, concerning Prospecting in Indiana. I believe these rules will adequately protect the environment and wildlife while providing a fair structure for those who wish to pursue this recreational activity.

3. RECOMMENDATION FOR FINAL ADOPTION

The proposed rules seek to authorize recreational hard mineral prospecting in Indiana waterways in a way that is environmentally sensitive and considerate of property rights. General licenses are established for both navigable waterways and nonnavigable waterways where permission is secured from persons with property rights on the affected portion of a waterway. Environmentally sensitive waterways or segments of waterways are excluded from qualification for a general license. The rules would not preclude a person from obtaining an individual license, for an activity which does not qualify under

the rules for a general license, where the person completes a licensure application through the Department of Natural Resources.

Thirty comments were received concerning the rule proposal, and sentiments ranged from neutrality to enthusiastic support. A few citizens expressed concerns or offered modifications. Responses to these follow:

Robert Henze urged that prospectors who remove “hazardous materials like lead sinkers, lead bullets, or mercury” should cause them to be properly disposed at a site designated for this purpose.

Response: To the extent retrieved hazardous materials which are recovered through prospecting require specific disposition, jurisdiction rests primarily with the Indiana Department of Environmental Management and not with the Department of Natural Resources. Although the hearing officer agrees in principle with the goals sought by Henze, implementation through a Commission rule may be redundant to Indiana Code 13 rules and could present enforcement challenges. In any event, the Henze recommendation may not be a “logical outgrowth” (in terms of requirements for rule adoption) of the immediate proposal. If his recommendation were to be pursued, the initiation of a new rule adoption process would be optimal and perhaps legally essential. IDEM input regarding propriety and efficacy could also be obtained if a new rule adoption process were initiated.

Jack Corpuz stated he favored “minimal licensing for amateur prospectors”. Tim Skees observed “I feel a small fee, or permit wouldn’t hurt anything....”

Response: The proposed rule establishes a licensing process. A “general license” is provided by which prospectors can pursue their hobby without completing a license application through the Department of Natural Resources. The terms of the general license are set forth in the rule proposal. A prospector who wishes to extract hard mineral resources in a manner not authorized by the rule would need to successfully complete a license application process through the Department. Conducting prospecting that does not comply with the rule authorization for a general license, and without

obtaining an individual license, would constitute a violation of IC 14-29-1 and 312 IAC 6 pertaining to navigable waters or of IC 14-28-1 and 312 IAC 10 pertaining to floodways. Conducting prospecting in a manner which is not authorized by a general license or by an individual license would be a licensing violation.

The commentators may instead be suggesting that an individual engaged in prospecting should be required to obtain a personal license before engaging in the activity—similarly to how an individual obtains an operator’s license before driving an automobile on a public highway or obtains a fishing license before fishing in public waters. The hearing officer does not believe the Commission has legal authority to require a personal license of this type. The Indiana General Assembly would need to enact legislation to require a license to engage in prospecting or to authorize the Commission to adopt rules to require a license to engage in prospecting.

James McIntyre expressed concerns that the Commission “may require a fee for permits”.

Response: No fee is required for an activity authorized by a general license described in the proposed rule. If an individual seeks to perform prospecting in a waterway within a floodway which does not qualify for a general license, however, the individual would need to successfully complete a license application process. By statute (Ind. Code 14-28-1-22(c)), a nonrefundable fee of \$200 is required for the application. This requirement already exists and is not dependent upon approval of the proposed rule.

Tom Van Vleet asked [A] what riparian means. [B] Why is it necessary to get written property owner permissions? [C] Also, as far as motorized gear, it only lists suction dredges? What about motorized high bankers, small trommels, metal detecting for gold in the creeks? I don’t want to get ticketed on a technicality, motorized machine wise, as I prefer to use a high banker with a dredge nozzle attached or my shovel.

Response: [A] Property rights associated with rivers and streams are known as “riparian” rights. Although traditionally property rights associated with lakes were known as “littoral” rights, Indiana courts have come to use the term “riparian” to include property rights associated with lakes as well as those associated with rivers and

streams. The rights associated with riparian ownership generally include: (1) the right of access to navigable water; (2) the right to build a pier out to the line of navigability; (3) the right to accretions; and (4) the right to a reasonable use of the water for general purposes such as boating and domestic use. *Parkison v. McCue*, 831 N.E.2d 118, 128 (Ind. App. 2005).

[B] An element of the rule is the protection of private property rights. A Department employee seeking confirmation that a prospector is complying with the terms of the general license, including obtaining landowner approval, needs prompt access to documentation of the approval.

[C] A prospecting activity, which does not meet the terms of the general license provided by the rule, can only be conducted pursuant to an individual license received from the Department following a successful license application. A prospector who has questions whether particular equipment satisfies the requirements of the general license may consult with the Department's Division of Fish and Wildlife for an informal perspective. A prospector may obtain a formal determination through a request, pursuant to 312 IAC 3-1-15, for a quasi-declaratory judgment.

Conclusion

The propose rules as published for preliminary adoption appear to be lawful and reasonably structured for their intended purposes. The procedural requirements for rule adoption have seemingly been satisfied. Within this context, the proposed amendments published in the INDIANA REGISTER, and attached as Exhibit "A", are recommended for final adoption.

Dated: August 24, 2009

Stephen L. Lucas
Hearing Officer

Exhibit "A"

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #09-080(F)

DIGEST

Adds 312 IAC 6-2-3.8, 312 IAC 6-2-6.8, and 312 IAC 6-5-10 concerning navigable waters and 312 IAC 10-2-24.5, 312 IAC 10-2-33.3, and 312 IAC 10-5-11 concerning nonnavigable waters to address general licenses and individual licenses that govern prospecting for hard mineral resources. Effective 30 days after filing with the Publisher.

312 IAC 6-2-3.8; 312 IAC 6-2-6.8; 312 IAC 6-5-10; 312 IAC 10-2-24.5; 312 IAC 10-2-33.3; 312 IAC 10-5-11

SECTION 1. 312 IAC 6-2-3.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-3.8 "Hard mineral resources" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 3.8. "Hard mineral resources" means naturally occurring alluvial deposits of the following:

- (1) Gold.**
- (2) Platinum.**
- (3) Silver.**
- (4) Lead.**
- (5) Copper.**
- (6) Diamonds and other gemstones.**
- (7) Other similar materials.**

(Natural Resources Commission; 312 IAC 6-2-3.8)

SECTION 2. 312 IAC 6-2-6.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-6.8 "Prospecting" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 6.8. "Prospecting" refers to activities conducted in preparation for or to remove hard mineral resources.

(Natural Resources Commission; 312 IAC 6-2-6.8)

SECTION 3. 312 IAC 6-5-10 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-5-10 Prospecting in a navigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-22-34-12; IC 14-28-1; IC 14-29-1; IC 14-29-3

Sec. 10. (a) This section governs prospecting in a navigable waterway that is subject to IC 14-28-1, IC 14-29-1, or IC 14-29-3.

(b) Unless otherwise provided in this section, a person must not engage in prospecting except as approved by the department in a written license.

(c) Without a written license or notice to the department, and except as provided in subsection (d), a person may engage in prospecting within the ordinary high watermark of a navigable waterway upon compliance with each of the following conditions:

(1) Lawful ingress to and egress from the navigable waterway is obtained.

(2) Written permission is obtained from any affected riparian owner.

(3) Prospecting is performed exclusively by one (1) or a combination of the following processes:

(A) Without the use of equipment.

(B) With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.

(C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.

(4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.

(5) Activities occur exclusively between sunrise and sunset.

(6) No mussels are taken as prescribed by 312 IAC 9-9-3.

(7) No endangered species are taken as prescribed by IC 14-22-34-12.

(d) The following waterways do not qualify for prospecting under subsection (c) or under 312 IAC 10-5-11(c):

(1) Big Blue River in Harrison County, Crawford County, and Washington County from river mile 57.2 downstream to river mile 11.5.

(2) The East Branch of the Little Calumet River in Porter County.

(3) Lake Michigan.

(4) The Portage Burns Waterway in Porter County.

(5) St. Joseph River in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Michigan State Line.

(e) Nothing in this section is intended to modify the rights of riparian owners.

(Natural Resources Commission; 312 IAC 6-5-10)

SECTION 4. 312 IAC 10-2-24.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-24.5 "Hard mineral resources" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 24.5. "Hard mineral resources" means naturally occurring alluvial deposits of the following:

(1) Gold.

(2) Platinum.

(3) Silver.

(4) Lead.

(5) Copper.

(6) Diamonds and other gemstones.

(7) Other similar materials.

(Natural Resources Commission; 312 IAC 10-2-24.5)

SECTION 5. 312 IAC 10-2-33.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-33.3 "Prospecting" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 33.3. "Prospecting" refers to activities conducted in preparation for or to remove hard mineral resources.

(Natural Resources Commission; 312 IAC 10-2-33.3)

SECTION 6. 312 IAC 10-5-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-11 Prospecting in a nonnavigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5;

Affected: IC 14-28-1; IC 14-29-1; IC 14-22-34-12

Sec. 11. (a) This section governs prospecting in a nonnavigable waterway that is subject to IC 14-28-1 and this article.

(b) Unless otherwise provided in this section, a person must not engage in prospecting in a nonnavigable waterway except as approved by the department in a written license.

(c) Without a written license or notice to the department, a person may engage in prospecting in a nonnavigable waterway upon compliance with each of the following conditions:

(1) Lawful ingress to and egress from the waterway is obtained.

(2) Written permission is obtained from the property owner or owners.

(3) Prospecting is performed exclusively by one (1) or a combination of the following processes:

(A) Without the use of equipment.

(B) With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.

(C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.

(4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.

(5) Activities occur exclusively between sunrise and sunset.

(6) No mussels are taken as prescribed by 312 IAC 9-9-3.

(7) No endangered species are taken as prescribed by IC 14-22-34-12.

(d) In addition to the waterways disqualified by 312 IAC 6-5-10(d), the following waterways do not qualify for prospecting under subsection (c):

(1) Cedar Creek in Allen County and Dekalb County from river mile 13.7 to the confluence with the St. Joseph River.

(2) Galien River in LaPorte County and its tributaries.

(3) North Fork of Wildcat Creek in Tippecanoe County and Carroll County from river mile 43.11 to river mile 4.82 and the South Fork of Wildcat Creek in Tippecanoe County from river mile 10.21 to river mile 0.00.

(4) Trail Creek in LaPorte County and its tributaries.

(5) Tributaries of the East Branch of the Little Calumet River.

(6) Tributaries of the St. Joseph River that have their confluences downstream of the Twin Branch Dam in Mishawaka.

(e) Nothing in this section is intended to modify the rights of riparian owners.

(Natural Resources Commission; 312 IAC 10-5-11)